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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------------|-------------|----------------------|---------------------|---------------------|
| 10/816,803 | 04/02/2004 | Woodrow Wilson | WILSON/Smart | 9977 |
| 23409 | 7590 | 09/22/2005 | EXAMINER | |
| MICHAEL BEST & FRIEDRICH, LLP | | | | TAPOLCAI, WILLIAM E |
| 100 E WISCONSIN AVENUE | | | | ART UNIT |
| MILWAUKEE, WI 53202 | | | | PAPER NUMBER |
| | | | | 3744 |

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/816,803 | WILSON, WOODROW | |
| | Examiner | Art Unit | |
| | William E. Tapolcai | 3744 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 September 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 9 and 10 is/are allowed.
 6) Claim(s) 1-8 and 11-21 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 2, 7, 8, 11-16, and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wetzel in view of Fujii et al. Wetzel discloses the claimed invention except for the drawer. Fujii et al teaches a merchandiser having a drawer 21 for sliding out. It would be obvious to provide Wetzel with at least one drawer, in view of Fujii et al, for the purpose of making it easy to retrieve the items being displayed. The items being displayed are considered to be a matter of obvious choice to one of ordinary skill in the art, as the focal point of the invention resides in the structural features of the merchandiser, and not in the items being displayed.

3. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wetzel in view of Fujii et al as applied to claim 2 above, and further in view of Gerweck et al. Wetzel as modified above by Fujii et al discloses the claimed invention except for the deflector. Gerweck et al teaches a merchandiser with an air deflector 44. It would be obvious to provide Wetzel with an air deflector, in view of Gerweck et al, for the purpose of directing the outflowing air wherever needed or desired.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wetzel in view of Fujii et al as applied to claim 2 above, and further in view of Rainwater. Wetzel as modified above by Fujii et al discloses the claimed invention except for the awning. Rainwater teaches a merchandiser with an awning 46. It would be obvious to provide

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Wetzel with an awning, in view of Rainwater, for the purpose of providing protection for the consumer.

5. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wetzel in view of Fujii et al as applied to claim 1 above, and further in view of Navarro. Wetzel as modified above by Fujii et al discloses the claimed invention except for the drip pan. Navarro teaches a merchandiser with a drip pan 20. It would be obvious to provide Wetzel with a drip pan, in view of Navarro, for the purpose of collecting condensate from the refrigeration system.

6. Claims 9 and 10 are allowed.

7. Applicant's arguments filed September 7, 2005 have been fully considered but they are not persuasive. Wetzel already discloses the cooled air spilling of one shelf into the next one. If Wetzel is modified by Fujii et al to provide at least one drawer, then the air flow will inherently flow as claimed. That is, the cooled air will spill out of either the shelf or drawer into the other of the shelf and drawer.

8.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William E. Tapolcai whose telephone number is (571) 272-4814. The examiner can normally be reached on Mon. - Thurs., 6:30 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl J. Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William E. Tapolcai
Primary Examiner
Art Unit 3744

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September 19, 2005